

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANTHONY HENRY	:	CIVIL ACTION
	:	
v.	:	
	:	
MARILYN BROOKS, ET AL.	:	NO. 06-48

ORDER

AND NOW, this day of July, 2007, upon careful and independent consideration of the Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254 (Doc. No. 1) and Petitioner's Motion for Leave to Amend (Doc. No. 20), and after review of United States Magistrate Judge Arnold C. Rapoport's Report and Recommendation (Doc. No. 33) and Amended Recommendation (Doc. No. 34), and consideration of Petitioner's Objections to the Magistrate Judge's Report and Recommendation (Doc. No. 35) and Amended Objections (Doc. No. 36), **IT IS HEREBY ORDERED** that:

1. Petitioner's Objections and Amended Objections are **OVERRULED**;
2. The Report and Amended Recommendation of Judge Rapoport is **APPROVED** and **ADOPTED**¹;
3. The Petition for a Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254 is **DENIED**;

¹Petitioner's Objections to the Magistrate Judge's Report and Recommendation present no new issues and arguments. Rather, Petitioner merely reiterates arguments that he already made to the Magistrate Judge, *i.e.*, that his counsel was ineffective (1) for failing to investigate and present alibi evidence, and (2) for incorrectly advising Petitioner not to testify on his own behalf. As the Magistrate Judge's Report and Recommendation correctly and adequately addresses both of these issues, we will adopt and approve that recommendation. To that same end, although Petitioner argues in his Amended Objections that the Magistrate Judge erred in failing to hold an evidentiary hearing to resolve factual issues presented in the Petition, we agree with the Magistrate Judge that there are no material factual issues requiring resolution and thus, we find that no evidentiary hearing is necessary.

4. Petitioner's Motion for Leave to Amend is **DENIED**;
5. Because the Petitioner has failed to make a substantial showing of the denial of a constitutional right, the Court declines to issue a certificate of appealability under 28 U.S.C. § 2253(c)(2); and
6. The Clerk shall **CLOSE** this case statistically.

BY THE COURT:

/s/ John R. Padova, J.
John R. Padova, J.